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1	Thomas A. Loquvam	F	
2	Thomas L. Mumaw Melissa M. Krueger	Z CORP GC. 13310N DOC ST CELTROL	
3	Amanda Ho	에 J.M 20 P 박 05	
4	Primacie west Capital Corporation	611 Jan 20 F 4 05	
	400 North 5 th Street, MS 8695		
5	Phoenix, Arizona 85004 Tel: (602) 250-3630		
6	Fax: (602) 250-3393		Arizona Corporation Commission
7	E-Mail: Thomas.Loquvam@pinnaclewest.	com	DOCKETED
1	Thomas.Mumaw@pinnaclewest.co		
8	Melissa.Krueger@pinnaclewest.co	<u>om</u>	JAN 2 0 2017
9	Amanda.Ho@pinnaclewest.com		DOCKETED BY
10	Attorneys for Arizona Public Service Comp	oany	8
11	BEFORE THE ARIZONA CO	ORPORATION COM	MMISSION
12			e developa aku aku kenden basel ba maka baselenan sa a
13	COMMISSIONERS		
14	TOM FORESE, Chairman BOB BURNS		
15	DOUG LITTLE ANDY TOBIN		
16	BOYD W. DUNN		
17	IN THE MATTER OF THE	DOCKET NO. E-	013454-16-0036
18	APPLICATION OF ARIZONA PUBLIC		01343A-10-0030
19	SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF	ARIZONA PUBI	LIC SERVICE
20	THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING		DWARD'S SECOND
21	PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE	MOTION TO CO	OMPEL
22	SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.		<i>y</i>
23	IN THE MATTER OF FUEL AND	DOCKET NO. E-	013454 16 0123
24	PURCHASED POWER PROCUREMENT AUDITS FOR ARIZONA PUBLIC		01343A-10-0123
25	SERVICE COMPANY.		
26			
27	On December 5, 2016, Intervenor W	arren Woodward sub	mitted his second set of
28	data requests (DRs) to Arizona Public Ser	vice Company (APS	or Company). That set

consisted of 45 questions, most with subparts. APS timely responded to Questions 9 through 13, 18, and 23 through 45 (with the exception of 36 (a)). APS objected to Questions 1 through 8, 14, 22 and 36(a) on the grounds of relevancy.

On December 27, 2016, Mr. Woodward filed his first Motion to Compel. APS filed a timely response to the Motion on December 30, 2017. That Motion is still pending before the Commission.

APS further objected to Questions 15, 16(a), 17(a), 19 and 21 of Mr. Woodward's DRs, but not withstanding its objections provided Mr. Woodward with answers to the best of its ability. Mr. Woodward then filed a second Motion to Compel (Second Motion) on January 19, 2017. The Second Motion addresses solely Question 19.

ARGUMENT

As noted above, APS has responded to Question 19. Mr. Woodward may wish that APS kept its accounting records in a manner that allowed for easy delineation in all respects of costs associated with a particular metering technology, but in point of fact, APS simply does not have the information in the form and in the detail requested. For example, Mr. Woodward asks about cyber-security costs associated with AMI. APS clearly incurs cyber-security costs as part of its overall Information Technology (IT) budget, but it does not break down or record costs on a project basis. To gain any insight into such granularity, APS would have to review thousands of individual invoices and attempt to somehow categorize them as first, cyber-security related, and second, AMI related. Even then, many invoices would cover multiple IT projects, and any assignment of costs to AMI purely arbitrary.

No party is required to provide information it does not possess. This is clearly set forth in Rule 34 of the Arizona Rules of Civil Procedure, which are adopted by reference in A.A.C. R-14-3-101(A).

¹ Both Question 19 and APS's responses are quoted in the Second Motion.

Rule 34 states that information requested through discovery must be "in the possession, custody or control of the party upon whom the request is served." This has long been the rule in Arizona. See State Farm Insurance Co. v. Roberts, 97 Ariz. 169, 173-74, 398 P.2d 671, 673 (1965); Dean v. Superior Court in and for Maricopa County, 84 Ariz. 104, 114, 324 P.2d 764, 771 (1958). It is also the established standard in other jurisdictions. "It is a rule of universal application that a party who does not have possession and control of documents cannot be ordered to produce them for discovery." City Savings Ass'n v. Mensik, 260 N.E.2d 110, 114 (Ill. App. Ct. 1970). City Savings cites cases from Missouri, New York and Texas as well as the Roberts to support its assertion that the rule enunciated in Roberts is truly of "universal application."

CONCLUSION

The Second Motion makes an assumption that APS is purposely withholding information. Nothing could be further from the truth. APS does not have the requested information and cannot produce what it does not have. It's just as simple as that. The

RESPECTFULLY SUBMITTED this 20th day of January 2017.

Thomas A. Loguvam

Thomas L. Mumaw

Melissa M. Krueger

Amanda Ho

Attorneys for Arizona Public Service Company

ORIGINAL and thirteen (13) copies of the foregoing filed this 20th day of January 2017, with:

Second Motion should be denied.

Docket Control

ARIZONA CORPORATION COMMISSION

1200 West Washington Street

Phoenix, Arizona 85007

1	COPY of the foregoing emailed / mailed this 20 th day of January 2017, to:	
2		
3	Albert Acken	Ann-Marie Anderson
4	Ryley Carlock & Applewhite One N. Central Ave., Ste 1200	Wright Welker & Paoule, PLC 10429 South 51st Street., Suite 285
5	Phoenix, AZ 85004-4417	Phoenix, AZ 85009
6		
7	Brendon Baatz	Stephen Baron
8	Manager ACEEE	Consultant J. Kennedy & Associates
9	529 14th Street N.W., Suite 600 Washington, DC 20045-1000	570 Colonial Park Drive, Suite 305 Roswell, GA 30075
10		
11	Patrick Black	Kurt Boehm
12	Attorney Fennemore Craig 2204 Fast Camplhook Bood, Suita 600	Attorney BOEHM, KURTZ & LOWRY 26 Foot Seventh Street, Swite 1510
13	2394 East Camelback Road, Suite 600 Phoenix, AZ 85016	36 East Seventh Street, Suite 1510 Cincinnati, OH 45202
14		
15	Bradley Carroll	Steve Chriss
16	Assistant General Counsel, State Regulatory	Senior Manager, Energy Regulatory Analysis
17	Tucson Electric Power Company 88 East Broadway Blvd.	Walmart Stores 2001 Southeast 10th Street
18	Mail Stop HQE910 P.O. Box 711	Bentonville, AR 72716-5530
19	John B. Coffman	Jody Cohn
20	John B. Coffman, LLC 871 Tuxedo Blvd.	Attorney Boehm, Kurtz & Lowry
21	St. Louis, MO 63119	36 E. Seventh St., Suite 1510 Cincinnati, OH 45202
22		
23	C. Webb Crockett	Brittany L. DeLorenzo
24	Attorney Fennemore Craig	Corporate Counsel IO DATA CENTERS, LLC
25	2394 East Camelback Road, Suite 600 Phoenix, AZ 85016	615 N. 48th St. Phoenix, AZ 85008
26		
27		
28		

1	Jim Downing	Greg Eisert
2	PO Box 70 Salome, AZ 85648	Director Government Affairs Chairman Sun City Homeowners Association
3		10401 W. Coggins Drive Sun City, AZ 85351
4		
5	Nicholas Enoch	Giancarlo Estrada Kamper, Estrada and Simmons, LLP
6	Attorney Lubin & Enoch, P.C. 349 North Fourth Ave.	3030 N. Third St., Suite 770 Phoenix, AZ 85012
7	Phoenix, AZ 85003	THOCHA, AZ 03012
8		
9	Patricia Ferre P.O. Box 433	Denis M. Fitzgibbons FITZGIBBONS LAW OFFICES, PLC
10	Payson, AZ 85547	P.O. Box 11208 Casa Grande, AZ 85230
11		
12		
13	Richard Gayer 526 W. Wilshire Dr.	Jason D. Gellman Snell & Wilmer LLP
14	Phoenix, Arizona 85003	400 E. Van Buren Street, Suite 800 Phoenix, AZ 85004
15		0
16		
17	Al Gervenack Director	Meghan Grabel Attorney for AIC
18	Property Owners & Residents Association	Osborn Maledon, P.A. 2929 North Central Avenue
19	13815 Camino del Sol Sun City West, AZ 85372	Phoenix, AZ 85012
20		
21	Tom Harris Chairman	Garry D. Hays Attorney for ASDA
22	Arizona Solar Energy Industries Association	Law Offices of Garry D. Hays, PC 2198 E Camelback Rd, Suite 305
23	2122 W. Lone Cactus Dr. Suite 2 Phoenix, AZ 85027	Phoenix, AZ 85016
24		
25		
26 27		
28		

1	Chris Hendrix	Kevin Hengehold
2	Director of Markets & Compliance Wal-Mart Stores, Inc.	Energy Program Director Arizona Community Action Association
3	2011 S.E. 10th Street Bentonville, AR 72716	2700 n. 3rd St., Suite 3040 Phoenix, AZ 85004
4		
5	Kevin Higgins	Timothy Hogan
6	Energy Strategies, LLC 215 South State Street, Suite 200	Attorney Arizona Center for Law in the Public
7	Salt Lake City, UT 84111	Interest 514 W. Roosevelt St.
8		Phoenix, AZ 85003
9	Steve Jennings	Thomas A. Jerigan
10	AARP 16165 N. 83rd Ave, Suite 201	139 Barnes Drive, Suite 1 Tyndall AFB, FL 32403
11	Peoria, AZ 85382	
12		
13	Teena Jibilian	Alan Kierman
14	Assistant Chief Administrative Law Judge	Director of Real Estate & Special Counsel
15	Arizona Corporation Commission 1200 W. Washington	IO Data Centers 615 N. 48th Street
16	Phoenix, AZ 85007	Phoenix, AZ 85008
17	Briana Kobor	Samuel L. Lofland
18	Program Director Vote Solar	Ryley Carlock & Applewhite One N. Central Ave., Ste 1200
19	360 22nd Street, Suite 730 Oakland, CA 94612	Phoenix, AZ 85004-4417
20		
21	Craig Marks	Jay Moyes
22	Attorney AURA	Moyes Sellers & Hendricks Ltd. 1850 N. Central Ave., Suite 1100
23	10645 N. Tatum Blvd. Ste. 200-676 Phoenix, AZ 85028	Phoenix, AZ 85004
24		
25		
26		
27		
28		

1 2 3	Jason Moyes Moyes Sellers & Hendricks Ltd. 1850 N. Central Ave., Suite 1100 Phoenix, AZ 85004	Michael Patten Attorney SNELL & WILMER L.L.P. One Arizona Center
4		400 E. Van Buren Street, Suite 1900 Phoenix, AZ 85004-2202
5	Greg Patterson	Ebony Payton
6	Attorney Munger Chadwick	139 Barnes Drive, Suite 1 Tyndall AFB, FL 32403
7	916 West Adams Suite 3 Phoenix, AZ 85007	
8		
9	Robert L. Pickels, Jr.	Daniel Pozefsky
10	Sedona City Attorney's Office 102 Roadrunner Drive	Chief Counsel RUCO
11	Sedona, AZ 86336	1110 W. Washington, Suite 220 Phoenix, AZ 85007
12		
13	Steven Puck	Pat Quinn AURA
14	Director Government Affairs Sun City Homeowners Association	5521 E. Cholla St.
15	10401 W. Coggins Drive Sun City, AZ 85351	Scottsdale, AZ 85254
16		
17	Kaitlyn A. Redfield-Ortiz Lubin & Enoch, P.C.	Court Rich Attorney
18	349 N. 4th Avenue Phoenix, AZ 85003	Rose Law Group, pc 7144 East Stetson Drive, Suite 300
19	THOCHA, AZ 65005	Scottsdale, AZ 85251
20		
21	Rob Robbins President	Lawrence Robertson, Jr. Attorney At Law
22	Property Owners & Resident Association	210 West Continental Road Suite 216A
23	13815 Camino del Sol Sun City West, AZ 85372	Green Valley, AZ 85622
24	Bull City West, 112 03572	
25		
26	9	
27		
28		

1 2 3	Timothy Sabo Snell & Wilmer 400 East Van Buren Suite 1900 Phoenix, AZ 85004	Jeff Schlegel SWEEP 1167 W. Samalayuca Dr. Tucson, AZ 85704
4	Thousand, The object	
5 6 7 8	Thomas E. Stewart General Manager Granite Creek Power & Gas LLC 5316 East Voltaire Avenue Scottsdale, AZ 85254-3643	Sheryl A. Sweeney Ryley Carlock & Applewhite One N. Central Ave., Ste 1200 Phoenix, AZ 85004-4417
9 10 11 12	Gregory W. Tillman Senior Manager, Energy Regulatory Analysis Wal-Mart Stores, Inc. 2011 S.E. 10" Street Bentonville, AR 72716	Emily A. Tornabene LUBIN & ENOCH, PC 349 North Fourth Avenue Phoenix, AZ 85003
13 14 15 16	Timothy La Sota Acting Director Legal Division Arizona Corporation Commission 1200 W. Washington Phoenix, AZ 85007	Scott Wakefield Attorney Hienton & Curry, P.L.L.C. 5045 N. 12th Street, Suite 110 Phoenix, AZ 85014-3302
17 18 19 20	Paul J. Walker Executive Director ConservAmerica 971 South Centerville Road PMB 139 Sturgis, MI 49091	Anthony Wanger President IO Data Centers 615 N. 48th Street Phoenix, AZ 85008
21 22 23 24	Charles Wesselhoft Deputy County Attorney Pima County 32 North Stone Ave., Suite 2100 Tucson, AZ 85701	Karen White Attorney Air Force Utility Law Field Support Center AFLOA/JACL-ULFSC, 139 Barnes Dr. Tyndall AFB, FL 32403
25 26		
27		
28		

1 2 3	Ken Wilson Western Resource Advocates 2260 Baseline Road, Suite 200 Boulder, CO 80302	Warren Woodward 200 Sierra Road Sedona, AZ 86336
4 5 6 7 8	Gary Yaquinto President & CEO Arizona Investment Council 2100 N. Central Avenue, Suite 210 Phoenix, AZ 85004	Ellen Zuckerman Senior Associate 4231 E. Catalina Drive Phoenix, AZ 85018
9 10 11	Cynthia Zwick 2700 N. 3rd Street, Suite 3040 Phoenix, AZ 85004	Elijah Abinah Acting Director Utilities Division Arizona Corporation Commission 1200 W. Washington
12	Shahan	1200 W. Washington Phoenix, AZ 85007
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20		
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